WP(C) 389/2006
BEFORE
THE HON'BLE MR JUSTICE B.K. SHARMA

JUDGEMENT AND ORDER

1. The challenge made in this writ petition is the selection of the respondent No. 5 for allotment of Retail Outlet Dealership (R.O.D.).

2. In response to Annexure- A notice for appointment published in the issue of the Asamia Pratidin dated 06.05.05, the petitioner submitted his application on 08.06.05 in the prescribed format along with supporting documents. The notice was issued for appointment of R.O.Ds. in various locations in Assam, Arunachal Pradesh, Meghalaya and Manipur. The locations were also indicated in the notice and the petitioner submitted his application for Digboi-Bogapani N.H. 38 in the revenue District of Tinsukia. The locations were indicated as at or in vicinity of the locality .

3. According to the petitioner he has shown suitable plot of land within the vicinity of the location for which dealership was to be offered. The land offered by the petitioner is situated at Borhil-2, Digboi, Survey No. 29, Hissa No., P. Patta 12 on N.H. 38 details of which were indicated in the application. The respondent No. 5 and 6 have shown their respective land at a place called Tingrai under Makum P.S., Dist. Tinsukia. It is the case of the petitioner that the respective land shown by the respondents No. 5 and 6 is not in the vicinity of the location, but outside the vicinity.

4. In response to the applications submitted by the petitioner and others, they were asked to appear before the selection committee for interview on 05.10.05. They were also asked to produce the originals of the documents submitted along with the applications. The petitioner after appearing in the interview held on 05.10.05 could find the final statement of the performance of the candidates in the website of the respondent refinery from which he has learnt that while the respondents No. 5 and 6 found place at first and second position, he has been placed at 3rd position. A copy of the final statement of performance has been annexed to the writ petition as Annexure-D. From the statement prepared by the selection committee members, it appears that percentage of marks secured by the respondents No. 5, 6 and the petitioner are 79.82, 71.92 and 71.52 respectively.

5. The petitioner has contended that as per clause 8 of the notice inviting the application containing the evaluation criteria, he having offered suitable plot of land in the vicinity of the locality, ought to have been preferred over the respondent No. 5 and 6 who could not offer land in the vicinity of the locality, but offered land outside the vicinity. According to the petitioner, the marks awarded to him under the head site inspection could not have been lesser than the respondent No. 5 and 6. Marks awarded to the respondents No. 5, 6 and the petitioner out of 100 are 81, 89 and 89. The petitioner has also claimed superiority on merit over the respondents No. 5 and 6. From the tenor of the arguments advanced at the time of hearing of the writ petition what has been emphasized is that the petitioner having offered land in the vicinity of the location ought to have been preferred over the respondents No. 5 and 6 whose land are beyond the vicinity of the location.

6. Counter affidavits have been filed both by the official respondents and the respondent No. 5. In both the affidavits the plea raised by the petitioner has been denied. The official respondents in their affidavit have stated that for the location in question altogether 8 applications have been received and the committee constituted for selection of suitable candidate inspected the sites offered by the applicants and awarded marks as per the approved guidelines. Therea

fter, interview was held in which out of 10 candidates, 7 candidates appeared. T he selection committee upon evaluation of the suitability of the candidates plac ed the respondent No. 5 at the first position, while the respondent No. 6 and th e petitioner have been placed at second and third position. As per the affidavit , the LOI have already been issued to the respondent No. 5 on 23.11.05 and she h as already developed the site for the ROD. The plea of the petitioner that the r espondents No. 5 and 6 have not shown suitable plot of land under Digboi P.S. an d Tinsukia District and in the vicinity of the location has been denied.

7. The respondent No. 5 has also denied the plea raised by the petitioner a nd has more or less reiterated the stand of the official respondents in their co unter affidavit.

8. The petitioner has filed the affidavit in reply to the affidavits filed by the respondents. In the reply affidavit, the petitioner has contended that th e outlet is to be located between Digboi and Bogapani in NH- 38, but the distanc e to the location of the respondent No. 5 is about 15 km from Bogapani. Thus ac cording to the petitioner, the said location could not be said to be in the vici nity of Bogapai.

9. I have heard Mr. P.G. Baurah, learned Sr. counsel assisted by Mr. T. Das , learned counsel for the petitioner. I have also heard Mr. S.N. Sarma, learned Sr. counsel assisted by Mr. A. Sarma, learned counsel representing the responden t Refinery. I have also heard Mr. G.N. Sahewalla, learned Sr. counsel assisted b y Md. Aslam, learned counsel for the respondent No. 5.

10. Emphasizing on the need of establishing the outlet at or in the vicinit y , Mr. Baruah, learned counsel for the petitioner argued that since the petitio ner has offered suitable plot of land on Borhil-2, Digboi at N.H.- 38, the petit ioner ought to have been preferred over the respondent No. 5 and 6 who could not show land in the vicinity of the locality. In support of his argument, Mr. Baru ah has placed reliance on two decisions of the Apex Court. They are- 1) AIR 1979 SC 1628 (Ramana Dayaram Shetty vs. International Airport Authority of India) a nd 2) (1975) 4 SCC 769 (C.H. Razik Ram vs. C.H. Jaswant Singh).

11. Countering the above argument, Mr. S.N. Sarma and Mr. G.N. Sahewalla, le arned counsel for the respondents, argued that the plea of the petitioner is ill founded. They have submitted that the plot of land offered by the respondent No . 5 being in the vicinity of the locality and having been found suitable for the dealership, the selection committee rightly selected the respondent No. 5 and t he writ Court will not sit on appeal over the selection made by the selection co mmittee.

12. I have gone through the records produced by the learned counsel repres enting the respondent Refinery. On perusal of the same, what I find is that the selection committee awarded marks upon evaluation of the relevant factors. The primary ground on which the writ petition has been filed has been noted above. U nder the head site inspection , the respondent No. 5 has been awarded better marks than the respondent No. 6 and the petitioner. According to the petitioner since his land is in the vicinity of the location, he ought to have been preferr ed over the respondent No. 5 whose land according to him is beyond the vicinity of the location. Learned counsel for the petitioner has put much emphasis on th e expression at or in the vicinity . He submitted that since the petitioner off ered land at the location, the respondents ought not to have considered the land of the respondent No. 5 to be more suitable, which is beyond the vicinity.

13. In the notice inviting applications, there was no indication that the l and offered at the locality would be preferred over the land in the vicinity of the locality. Although it was argued during the course of hearing by the learne d counsel for the petitioner that the petitioner has offered land at the localit

y but as per the own statement of the petitioner in paragraph-6 of the writ petition, the land offered by the petitioner is in the vicinity of the location where the dealership is to be established. According to the petitioner since the land offered by him is situated in between Digboi- Bogapani, N.H.- 38, the petitioner ought to have been considered as more suitable than the respondents No. 5 and 6.

14. The simple meaning of the term at or in the vicinity in reference to the location Digboi-Bagapani, NH-38 will have to be understood as the area beyond Digboi -Bogapani, NH-38. The argument that the land will have to be in between Digboi- Bogapani, cannot be accepted for the simple reason that the expression at is coupled with or in the vicinity of the locality . Thus, the land ould be either at in between Digboi and Bogapani or at the vicinity of the specified locality. In the reply affidavit filed by the petitioner it has been stated that the distance of the land of the respondent No. 5 is about 15 km from Bogapani. The requirement for the dealership is the plot of land either at or in the vicinity of the Digboi-Bogapani, NH - 38.

15. It is for the selection committee to deicide as to which plot of land is more suitable for the retail outlet. If the land offered by the respondent No. 5 in the vicinity of the locality has been found to be more suitable than the land offered by the petitioner, the writ Court cannot sit on appeal over such suitability assessed by the duly constituted selection committee. The interpretation which is sought to be given by the petitioner cannot be accepted for the simple reason that it is not only at , but the land could be or in the vicinity of the locality . Thus, the more suitable plot of land in the vicinity of the locality could be preferred over the land situated between Digboi and Bogapani.

16. Apart from the above, it is not a case of rejection of the plot of land offered by the petitioner as the awarding of marks to the respective aspirants is upon adjudging the suitability of the respective plot of land. Upon inspection of the respective plot of land, if the selection committee has adjudged the land offered by the respondent No. 5 to be more suitable, I am afraid, that on the basis of the interpretation furnished by the petitioner, a finding in favour of the petitioner cannot be given that the marks awarded to him under the head site inspection ought to have been more than the marks awarded to the respondents No. 5 and 6. Apart from the suitability of the land, other parameters are also to be fulfilled. In this connection, each of the applicants was furnished with the Brochure for Selection of Retail Outlet Dealer, laying down various parameters for selection. It is on the totality of those parameters, the suitability is adjudged and not merely on the basis of the location of the land. Various other factors such as sales potential, frontage, requirement of earth filling /rock cutting, proximity to culvert, soil type, availability of the essentials such as power, water, visibility from road, presence of divider, outside octroi limits are also to be considered as per the criteria laid down for adjusting the suitability of the site.

17. The land of the respondent No. 5 has been selected as more suitable than the land of the petitioner and the respondent No. 6. Coupled with this, other factors have also been considered for which interview was conducted and it is in the totality of the circumstances, the respondent No. 5 has been selected. The writ petition was entertained without any interim order and thus the respondent No. 5 and the official respondents could proceed with the follow up action pursuant to the LOI issued in favour of the respondent No. 5. As per the affidavit filed by the respondents, the LOI has been issued to the respondent No. 5 on 23.11.05 which is prior to filing of the writ petition on 20.01.06. This LOI is also not under challenge and the prayer made in the writ petition is not to issue allotment order of the retail outlet dealership in favour of the respondent No. 5, but by the time the writ petition was filed, the LOI was already issued to the respondent No. 5.

18. The decisions on which Mr. Baruah, learned counsel for the petitioner has placed reliance are of no help to the case of the petitioner.

19. For the foregoing reasons, I do not find any merit in the writ petition so as to interfere with the decision of an expert body regarding selection of the candidate for retail outlet dealership.

20. In view of the above, the writ petition is dismissed, without, however, any order as to costs.